



## **Update to the profession on criminal jury trials and other listings in the Supreme Court of Victoria Criminal Division**

*September 2022*

Like all courts across the jurisdiction, the COVID-19 pandemic has affected, and continues to affect, listings in the Criminal Division.

Supreme Court criminal jury trials did not resume until late October 2021 and, even then, social distancing requirements limited the Court to hearing a maximum of three trials at any one time until March 2022. Since then, the Supreme Court has resumed jury trials at close to full capacity, with COVID safety measures in place.

As at 31 August 2022, there were a total of 170 accused awaiting trial in the Supreme Court. Some of those accused have been charged with co-accused, so the number of potential trials is considerably less than that.

Eight of the pending matters are ‘legacy’ cases, which were initiated in the Court before the start of the pandemic in March 2020. Two are listed for plea in September 2022, three have trial dates fixed in 2022, and the other three have been delayed until 2023 for other reasons. Most of these legacy cases have either had, or been offered, multiple earlier trial dates, but the trial has not been able to proceed because of outstanding pre-trial issues.

Of the total of 170 pending matters, 110 began by way of standard committal (65%) and 60 began via the Court’s fast-track option (35%). Additionally, 97 of the total pending matters have been fixed for trial or a plea hearing in either 2022 or 2023, and 8 are awaiting sentence.

The remaining pending matters will be fixed for hearing upon completion of pre-trial case management processes, including witness examinations in fast-track matters. Presently, the Court is fixing trial dates in term 2 of 2023.

### **Fast-tracked cases**

The fast-tracking of homicide cases was introduced in March 2020, as a way to alleviate pressure on listings in the Magistrates’ and Children’s Courts, at a time when those courts were unable to conduct committals due to the pandemic. The fast-tracking of cases continues to be an option in all homicide proceedings.

Since its inception in late March 2020, 93 fast-track matters have been initiated, 33 of which have already been finalised.

There are presently 60 pending fast-track matters, of which:

- 30 have been listed for trial
- 4 have been listed for plea

with the remainder undergoing intensive case management, including s198B witness examinations.

The Court continues to encourage practitioners to consider the fast-tracking option in appropriate cases. The listing of witness examinations pursuant to s 198B of the CPA is able to be accommodated quickly, and in most instances as early as 4-8 weeks from the date the matter is committed to the Supreme Court. The goal in fast-tracked cases is to reduce the overall time from charge to finalisation by managing those cases in the jurisdiction where they will be finally determined. This allows for a targeted and flexible approach to case management, including early resolution.

### **Case management**

Since early 2019, criminal indictment cases in this Court have been individually managed, so that significant pre-trial issues which may affect the conduct of the trial are able to be identified and determined in advance of the trial date, where appropriate. This has led to greater efficiency and certainty for trial listings.

Given the uncertainty brought about by the pandemic, since March 2020 trial dates have not been fixed until after the filing of the indictment, prosecution opening and statutory notices, and defence response. That was done to allow the Court and the parties to have a greater understanding of the issues in dispute, any significant pre-trial issues that may affect the conduct of the trial, and a more certain estimate of trial duration. That allowed the Court to maximise the use of limited court rooms, and more efficiently and better utilise available hearing days.

Unless there is some unexpected future development in the pandemic, the Court is now in a position to move back to allocating a trial date (at least on a provisional basis) at the first directions hearing for matters that have not come through the fast-track. The Court is currently working on a new practice note which will address future case management in fast-track and non-fast-track matters. It will develop the practice note in consultation with the relevant user groups.

Throughout the period since the pandemic started, the Court has tried to accommodate the convenience of counsel to the greatest possible extent, being mindful of the effect that the pandemic was having on practitioners, as well as the parties. However, now that the County

and Supreme Courts have significantly increased their listings of criminal jury trials, it may not always be possible to accommodate counsels' personal convenience going forward.

Non-jury trial hearings (eg. plea hearings, sentencing, directions hearings, witness examinations), as well as bail and other applications, continue to be conducted without disruption, either entirely remotely, as a hybrid hearing, or in-person.

### **Regional listings of trials and pleas**

The Court has also resumed jury trials and plea hearings at regional courts. However, practitioners should be aware that regional court rooms continue to have reduced capacity to hear trials with multiple accused due to modifications undertaken during the pandemic to facilitate social distancing inside court rooms. The Court will continue to do everything possible to ensure that trials can proceed at the proper venue where possible.

The Honourable Justice Hollingworth  
Principal Judge  
5 September 2022